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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORKSTRIVECTIN OPERATING COMPANY,
INC., a Delaware Corporation,

Plaintiff,

vs.

PANDORA BEAUTY a New York Company;
SHAPERS BEAUTY SUPPLY COMPANY, a
New York Company; PUNDIT K. KOHLI, an
individual residing in New York; VANEET K.
KOHLI, an individual residing in New York;
and JOHN DOES I-X;

Defendants.

**PROPOSED FINAL JUDGMENT
AND PERMANENT INJUNCTION
AGAINST DEFENDANTS
SHAPERS BEAUTY SUPPLY
COMPANY, PUNDIT K. KOHLI
AND VANEET K. KOHLI**

Civil Action No. CV-14-6421

The Court, based upon the pleadings, papers, declarations, and other evidence presented to the Court at the evidentiary hearing held before the Court August 22, 2016, and based upon the failure of Defendants Shapers Beauty Supply Company, Pundit K. Kohli and Vaneet K. Kohli (hereinafter "Defendants") to respond to the Complaint, makes the following findings of fact and conclusions of law:

Beginning in 2002, well prior to the acts complained of herein, and continuing through today Plaintiff's predecessor and later Plaintiff developed STRIVECTIN Products, which have been continuously distributed and sold in interstate commerce and in the State of New York under the STRIVECTIN trademark, in copyrighted packaging that incorporates Plaintiff's unique and distinctive trade dress, and using copyrighted protected photographs.

1. STRIVECTIN is a coined, arbitrary word that was chosen as a trademark due to its uniqueness and high degree of inherent distinctiveness.

2. As a result of the extensive and substantial advertising and sales of cosmetic products under the STRIVECTIN trademark and Plaintiff's maintenance of premium quality standards relating thereto, the mark STRIVECTIN has become exceedingly well and favorably known to the general consuming public throughout the United States and in the State of New York as distinctive indications of origin of Plaintiff's STRIVECTIN Products.

3. StriVectin Operating Company, Inc. is the owner of the STRIVECTIN trademark. Plaintiff and its predecessors have continuously used said marks on and in connection with cosmetic products and in the advertising and sale thereof in interstate commerce since as early as 2002.

4. Plaintiff's predecessor duly registered STRIVECTIN as a trademark for cosmetic products in the United States Patent and Trademark Office under Registration No. 3,175,013, which issued November 21, 2006. StriVectin Operating Company, Inc. is the record owner of Registration No. 3,175,013.

5. Registration No. 3,175,013 is *prima facie* evidence of the validity and ownership thereof and are constructive notice of ownership of the STRIVECTIN mark, as provided by §§ 7(b) and 22 of the Lanham Act, 15 U.S.C. §§ 1057(b) and 1072.

6. The U.S. Copyright for various photographs for STRIVECTIN Products were registered with the U.S. Copyright Office by StriVectin Operating Company, Inc., as set forth below.

StriVectin Power Trio Kit

1-1021556251

Holiday Blockbuster Kit	1-1023513199
StriVectin-SD - Intensive Concentrate for Stretch Marks & Wrinkles	1-1023513227
StriVectin-SD 5 oz Intensive Concentrate for Stretch Marks & Wrinkles	1-1023513255
Sensitive Skin StriVectin-SD Intensive Concentrate for Stretch Marks & Wrinkles - 2 oz	1-1023513283
StriVectin-AR Advanced Retinol Eye Treatment	1-1022205104
StriVectin-AR Advanced Retinol Day Treatment	1-1021627665
StriVectin-AR Advanced Retinol Night Treatment	1-1022271472
StriVectin-SD Power Serum for Wrinkles	1-1023379961
StriVectin-EV - Get Even Brightening Serum	1-1022360341
StriVectin-TL Tightening Face Cream	1-1023603407
StriVectin-TL Tightening Face Serum	1-1023603456
StriVectin-EV Get Even Dark Circle Corrector	1-1023603524
StriVectin-SD Eye Concentrate for Wrinkles - Allure Seal	1-1023889771
StriVectin -TL Tightening Eye Serum	1-1023889800
StriVectin-TL Tightening Neck Cream	1-1023889978
StriVectin-TL Tightening Body Cream - Body/Corps	1-1023890056
StriVectin-SD Instant Retexturizing Scrub	1-1023890114
StriVectin-EV Get Even Spot Repair	1-1023379990
StriVectin-SD Volumizing Hand Treatment	1-1023890142
StriVectin-SD Intensive Concentrate for Existing Stretch Marks - 6 oz	1-1023890266
StriVectin-HS Hydro-Thermal Deep Wrinkle Serum	1-1023890170
StriVectin Instant Moisture Repair	1-1023890198
StriVectin-WH Photo -White Booster Serum	1-1023603331
StriVectin-WH Photo-White Spot Repair	1-1023603359
Sensitive Skin StriVectin-SD Intensive Concentrate for Stretch Marks & Wrinkles	1-1023890294
StriVectin-SH Replenishing Cleanser	1-1023981669
StriVectin-WH Photo White Night Cream	1-1024036010
StriVectin-AR 24 Hour Advanced Retinol System	1-1348810801
StriVectin Age Delay	1-1348811148
StriVectin Age Fighting Miracle Set	1-1348811234
StriVectin Ageless Essentials	1-1348871390
StriVectin All-Over-Lift	1-1348871466
StriVectin-AR Advanced Retinol Day Treatment SPF 30	1-1348871522
StriVectin-AR Advanced Retinol Eye Treatment	1-1348871568
StriVectin-AR Advanced Retinol Night Treatment	1-1348871604
StriVectin-AR Advanced Retinol Concentrated Serum	1-1348871660
bmr Activator For Lift	1-1348871696
bmr Arm Lift	1-1348871732

bmr Bottom Lift	1-1348871798
bmr Facial Toner	1-1348872024
bmr Tummy Lift	1-1348872120
StriVectin Clinical Corrector Light (Eye Illuminator)	1-1348872156
StriVectin Clinical Corrector Medium (Eye Illuminator)	1-1348872192
StriVectin Clinical Corrector Advanced Anti-Aging Face Tint - Light	1-1418230271
StriVectin Clinical Corrector Advanced Anti-Aging Face Tint - Medium	1-1418230308
StriVectin Clinical Corrector Anti-Aging Lip Tint - Pink	1-1418230374
StriVectin Clinical Corrector Anti-Aging Lip Tint - Plum	1-1418230550
StriVectin-AR Advanced Daytime Retinol Beauty	1-1418320606
StriVectin-AR Day to Night Advanced Retinol Treatment	1-1418320702
StriVectin-EV Even Brighter	1-1418320748
StriVectin-EV Get Even Dark Circle Corrector	1-1418320824
StriVectin-EV Get Even Brightening Serum (1.7 oz)	1-1418320920
StriVectin-EV Get Even Brightening Serum 1 oz	1-1418321016
StriVectin Eye Openers	1-1418321132
StriVectin-TL Get Lifted	1-1418463321
StriVectin Healthy Skin Blockbuster	1-1418520148
StriVectin LABS Booster Oil	1-1418520404
StriVectin LABS Extreme Cream	1-1524757431
StriVectin LABS Anti-Wrinkle Precision Patches & Smoothing Balm	1-1524757431
StriVectin LABS 5-Minute Weekly Glycolic Peel	1-1524799597
StriVectin Miracle Multitasker	1-1524823643
StriVectin Most Wanted Ageless Skin Kit	1-1524823679
StriVectin-TL Neck Up Lift	1-1524823715
StriVectin New Beginnings	1-1524823751
StriVectin Nighttime Miracle Worker	1-1524823787
StriVectin-AR Nighttime Retinol Repair	1-1524823853
StriVectin Perfect Start	1-1524823889
StriVectin Power Couple	1-1524823925
StriVectin-TL Power Lift	1-1524823991
StriVectin Power Trio for Wrinkles	1-1524824027
StriVectin Present Perfect Lavendar	1-1524824063
StriVectin Present Perfect Pink	1-1524824109
StriVectin SD Advanced	1-1593063701
StriVectin SD Advanced 2 oz	duplicate
StriVectin Eye Concentrate for Wrinkles	1-1593063938
StriVectin Volumizing Hand Treatment	1-1616294301

StriVectin Potent Wrinkle Reducing Treatment	1-1616294338
StriVectin SD Advanced Travel	1-1616316694
StriVectin-SD Eye Concentrate for Wrinkles	1-1616316730
StriVectin-SD Eye Concentrate for Wrinkles - Travel	1-1616316766
StriVectin-SD Eye Concentrate for Wrinkles NIA Technology - Travel	1-1616316802
StriVectin Volumizing Hand Treatment	1-1616316838
StriVectin-SD Volumizing Hand Treatment 5 oz	1-1616316874
StriVectin-SD Power Serum for Wrinkles	1-1616316910
StriVectin-SD Travel	1-1616316946
StriVectin-SH Overnight Resurfacing Serum	1-1616316982
StriVectin-SD Instant Retexturizing Scrub	1-1616317028
StriVectin-TL Skin Tight	1-1616317094
StriVectin Sun Kit & Eye Bundle	1-1616317130
StriVectin TaskForce	1-1616317186
StriVectin The Perfect Duo	1-1616317222
StriVectin Tightening Trio for Lift	1-1628632051
StriVectin-TL Tightening Body Cream - Body/Corps	1-1628794961
StriVectin-TL Tightening Body Cream - Body/Corps Travel Size	1-1628795018
StriVectin-TL 360 Degree Tightening Eye Serum	1-1628795224
StriVectin-TL Tightening Face Cream	1-1628897760
StriVectin-TL Tightening Face Serum	1-1628897856
StriVectin-TL Tightening Neck Cream	1-1628897892
StriVectin-TL Tightening Neck Cream 1 oz	duplicate
StriVectin-TL Tightening Neck Cream Supersized	duplicate
StriVectin-TL Tightening Neck Cream Travel	duplicate
StriVectin-TL Total Body	1-1671694895
StriVectin Wrinkle Fighting Heroes	1-1671694859
StriVectin Youth Boost	1-1671694931
StriVectin Youth Patrol	1-1671694841
StriVectin Age-Fighting Discovery Kit	1-1671695024
StriVectin Potent Wrinkle Reducing Treatment Serum	duplicate
StriVectin Potent Wrinkle Reducing Treatment Packaging	duplicate
StriVectin LABS Extreme Cream	1-1671695080

7. StriVectin Operating Company, Inc. has the exclusive license to use the STRIVECTIN trademark and copyrights in connection with StriVectin Products.

8. Consequently, all use of the trademark STRIVECTIN in connection with cosmetic products and said copyrighted materials by StriVectin Operating Company, Inc. inures to the benefit of StriVectin Operating Company, Inc.

9. Plaintiff has utilized a number of authorized resellers to distribute STRIVECTIN Products. These authorized resellers, who are selected based on their reputation and their proven ability to service customers, are trained in and agree to meet Plaintiff's quality control standards for storing and selling STRIVECTIN Products. Defendants are not authorized resellers or authorized manufacturers of STRIVECTIN Products.

10. In order to control the quality of the STRIVECTIN Products it sells, Plaintiff has developed criteria for its resellers. For example, Plaintiff has entered into agreements with its resellers limiting where and to whom the STRIVECTIN Products may be sold. STRIVECTIN Products are to be sold in high-end retailers (or high end retailers' Websites) with excellent customer service and quality control programs. These retailers have strong customer return policies, which allow customers to return products for a refund if the customer is not satisfied. Plaintiff strictly limits the Websites that can sell its products and the stores where the STRIVECTIN Products may be sold. It prohibits the sale of STRIVECTIN Products on discount websites like Pandorabeauty.com.

Defendants Shapers Beauty Supply Company, Pundit K. Kohli and ~~Vaneet K. Kohli~~

11. Notwithstanding Plaintiff's well-known and prior established rights in the STRIVECTIN trademark, Defendants are engaged in the advertising, offering for sale, distribution and illegally diverted STRIVECTIN Products on unapproved websites.

12. Specifically, Defendants' illegally diverted STRIVECTIN Products are offered for sale on Pandorabeauty.com and at the retail store Shapers Beauty. Pandorabeauty.com and Shapers Beauty have poor reputations for customer service, sell low quality products, sell grey market or black market goods, and otherwise harms the reputation of STRIVECTIN Products as a consequence of Pandora Beauty's and Shapers Beauty's sale of STRIVECTIN Products on Pandorabeauty.com and in their retail store.

13. Defendants' actions constitute trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and at common law as Defendants have intentionally engaged in the offering for sale, distribution and sale of illegally diverted and stolen STRIVECTIN Products in interstate commerce and in the State of New York with knowledge that such goods are illegally diverted STRIVECTIN Products.

14. Defendants have intentionally used and are using stolen and illegally diverted STRIVECTIN Products for the purpose of exploiting and trading upon the substantial goodwill and reputation of Plaintiff, symbolized by the STRIVECTIN trademark and to enable Defendants to misrepresent their products as emanating from or otherwise being approved by Plaintiff.

15. Defendants' use of the STRIVECTIN trademark in the advertising, offering for sale, distribution and sale of cosmetic products caused the public to believe, contrary to fact, that the cosmetic products are otherwise manufactured, sponsored or approved by Plaintiff. Defendants' use of the trademark STRIVECTIN accordingly infringes Plaintiff's exclusive rights in the STRIVECTIN trademark under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and at common law.

16. Defendants had actual knowledge of Plaintiff's prior use of and exclusive rights in the STRIVECTIN trademark when they began the advertising, offering for sale, distribution and sale of the STRIVECTIN Products, and thus have willfully and deliberately infringed Plaintiff's exclusive trademark rights.

17. Defendants are engaged in acts of unfair competition under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and at common law.

18. Defendants' advertising, offering for sale and sale of illegally diverted STRIVECTIN Products utilizing illegal reproductions of copyright protected photographs in the manner hereinabove set forth, constitutes the use of a false designation of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), which is likely to confuse or deceive the public as to the source, sponsorship and approval of said products, thereby causing Plaintiff immediate and irreparable damage.

19. Defendants' use of pandorabeauty.com, the internet and store locations to sell illegally diverted STRIVECTIN Products and falsely advertising that Defendants are selling approved STRIVECTIN Products in an approved manner, is in violation of the Lanham Act § 43 (a)(1), 15 U.S.C. § 1125 (a)(1).

20. Defendants are engaged in acts of copyright infringement under § 501 of the Copyright Act, 17 U.S.C. § 501.

21. Defendants are using copyright protected photographs to sell their illegally diverted STRIVECTIN Products, in violation of Plaintiff's exclusive rights created by § 106 of the Copyright Act, 17 U.S.C. § 106, and thus constitutes willful copyright infringement under § 501 of the Copyright Act, 17 U.S.C. § 501.


22. Defendants have intentionally interfered with Plaintiff's existing and prospective relationships.

23. Plaintiff currently has contracts and business relations with authorized product manufacturers and authorized resellers relating to the manufacture, distribution, marketing and sale of authentic STRIVECTIN Products that are beneficial and of high value to Plaintiff.

24. Defendants are aware of Plaintiff's contracts and business relations with authorized product manufacturers and authorized resellers relating to the manufacture, distribution, marketing and sale of authentic STRIVECTIN Products.

25. Defendants' unlawful advertising, offering for sale and sale of illegally diverted STRIVECTIN Products have intentionally interfered with Plaintiff's existing and potential business.

Accordingly, it is hereby ORDERED as follows:

1. Defendants SHAPERS BEAUTY SUPPLY COMPANY and PUNDIT K. KOHLI  and ~~VANEET K. KOHLI~~ and each of their respective agents, suppliers, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert therewith, be permanently enjoined from:

- (a) Using any version of the trademark STRIVECTIN for the sale of any products on pandorabeauty.com, at the retail store Shapers Beauty, or online;
- (b) Using any version of the trademark STRIVECTIN, or any reproduction, counterfeit, copy or colorable imitation of the STRIVECTIN mark, or any other of Plaintiff's marks in any manner;

- (b) Competing unfairly with Plaintiff or otherwise injuring Plaintiff's business reputation in the manner complained of herein;
- (c) Advertising that Defendants are selling STRIVECTIN and/or any other of Plaintiff's products;
- (d) Infringing Plaintiff's protected copyrighted materials; and
- (e) Intentionally interfering with Plaintiff's existing and prospective business relations.

2. Defendants will be permanently restrained from manufacturing, importing, offering for sale, distributing, selling and/or otherwise disposing of any STRIVECTIN product, product inserts and product packaging, or any other of Plaintiff's products.

3. Defendants shall cease operating the pandorabeauty.com website.

4. Defendants shall return to Plaintiff for destruction all StriVectin-branded product currently offered for sale on any platform operated by Defendants

5. Defendants shall not engage in any spoliation, tampering, damage, deletion, disposition, or destruction of any records, documents, or data, whether electronically stored or otherwise, including but not limited to paper copies, electronic copies, product packaging, product labeling or otherwise, which relate in any way to the manufacture, purchase, offering for sale, advertising, distribution and/or sale of any counterfeit STRIVECTIN dietary supplements.

6. Defendants shall immediately turn over all products, materials, or any other thing bearing a trademark or copyright of any other of Plaintiffs' products.

The Court enters the following JUDGMENT:

\$1,000,000 in statutory damages jointly and severally against Defendants pursuant to 15 U.S.C. § 1117 for Defendants trademark infringement and 17 U.S.C § 504 for Defendants copyright infringement.

DATED this 28th day of November, 2016, at Central Islip, NY

BY THE COURT:


United States District Judge